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FAKHRUZAMMA

v.

STATE OF JHARKHAND & ANR.
(Criminal Appeal No. 2086 of 2013)

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DECEMBER 12, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Code of Criminal Procedure, 1973:

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s.197 – Previous sanction for prosecution of public servant – Held: s.197 clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government – Clauses (a) and (b) of r.825 of Jharkhand Police Manual confer power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector, without obtaining prior approval of State Government – High Court has rightly held that since the competent authority had removed the appellant from service, sanction u/s 197 was not warranted – Jharkhand Police Manual – rr.825(a) and (b).

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The appellant filed a petition before the High Court seeking to quash the proceedings of a complaint case before the Judicial Magistrate, filed against him alleging offences punishable u/ss 456, 323, 504, 506, 342, 386, 201, 120-B and 304 IPC. His case was that he was a Sub-Inspector of Police and the alleged act was committed while discharging his official duty and in the absence of previous sanction of the State Government u/s 197 CrPC, the Judicial Magistrate could not have taken cognizance of the offences alleged. The High Court dismissed the petition holding that since the competent authority had removed the appellant from service, sanction u/s 197 CrPC was not warranted.

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Dismissing the appeal, the Court

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HELD: 1.1. Section 197 CrPC clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. Clauses (a) and (b) of r.825 of the Jharkhand Police Manual confer power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. In *Nagraj's* case a Three-Judge Bench of this Court has held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty. [para 7-8] [830-C; 831-B-E]

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Nagraj v. State of Mysore (1964) 3 SCR 671 = AIR 1964 SC 269 – relied on.

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Sankaran Moitra v. Sadhna Das & Anr. 2006 (3) SCR 305 = (2006) 4 SCC 584; and *Rakesh Kumar Mishra v. State of Bihar & Ors.* 2006 (1) SCR 124 = (2006) 1 SCC 557 – held inapplicable.

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1.2. The High Court was right in applying the ratio laid down in *Nagraj* while interpreting the provisions of the Jharkhand Police Manual and the view of the High Court is endorsed. [para 9] [831-F-G]

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Case Law Reference:

2006 (1) SCR 124 held inapplicable Para 4

2006 (3) SCR 305 held inapplicable Para 4

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A (1964) 3 SCR 671 relied on para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2086 of 2013.

B From the Judgment and Order dated 09.09.2011 of the
High Court of Jharkhand at Ranchi in CRLMP No. 1669 of
2006.

S. K. Katriar, Manoj K. Srivastava, Rameshwar Prasad
Goyal for the Appellant.

C Jayesh Gaurav, Anil K. Jha, Priyanka Tyagi, Mithilesh
Kumar Singh for the Respondents.

The Judgment of the Court was delivered by

D **K.S. RADHAKRISHNAN, J.** 1. Leave granted.

2. The question that has come up for consideration in this
case is whether sanction under Section 197 Cr.P.C. is
necessary from the State Government before prosecuting the
E Appellant, though he was removed from service following the
procedure laid down in Jharkhand Police Manual.

3. The Sub-Divisional Judicial Magistrate, Giridih, in
Complaint Case No.281 of 2003, T.R. No.835 OF 2006, took
F cognizance against the Appellant for various offences under
Sections 456, 323, 504, 506, 342, 386, 201, 120B and 304
IPC. That order was challenged by the Appellant before the
High Court by filing Crl. M.P. No.1669 of 2006 under Section
482 Cr.P.C. stating that in the absence of previous sanction of
the State Government, as per the provisions of Section 197
G Cr.P.C., the learned Magistrate could not have taken
cognizance of the offences against the appellant who was a
Sub-Inspector of Police, since the act alleged was committed
while discharging his official duty. The High Court rejected that
contention by holding that since the competent authority had
H removed the Appellant from service, sanction to prosecute

under Section 197 Cr.P.C. was not warranted. Aggrieved by A
the same, this appeal has been preferred.

4. Shri S.K. Katriar, Senior Advocate, appearing for the
Appellant, submitted that the High Court has committed an error
in holding that no sanction under Section 197(1) Cr.P.C. was B
necessary before prosecuting the Appellant. The learned senior
counsel submitted that the High Court failed to appreciate the
ratio laid down by this Court in *Sankaran Moitra v. Sadhna Das*
& *Anr.* (2006) 4 SCC 584] and *Rakesh Kumar Mishra v. State*
of Bihar & Ors. [(2006) 1 SCC 557] and erroneously held that C
no sanction was contemplated under Section 197 Cr.P.C. for
prosecuting the Appellant.

5. Shri Jayesh Gaurav, Advocate, appearing for the
Respondents, on the other hand, contended that the Appellant
is a Sub-Inspector of Police and hence governed by the D
Jharkhand Police Manual and he can be removed from the
service by the Inspector General of Police or the Deputy
Inspector General of Police and for removal from service of a
Sub-Inspector, no approval/sanction of the State Government
is necessary and, hence, Section 197 Cr.P.C. would not apply E
to case of the Appellant. Learned counsel also submitted that
the issue raised in this case stands covered by the judgment
of this Court in *Nagraj v. State of Mysore* [(1964) 3 SCR 671
= AIR 1964 SC 269].

6. The Appellant's case is that he had arrested one Satyam
Mirza (since deceased) for offences under Section 376(g) and
302 IPC. The case was registered at Police Station Gande
where the Appellant was officiating as an office-in-charge.
According to the Appellant, while returning from the spot led by G
the deceased in search of desi katta, the deceased jumped
out of the running police vehicle TATA 407 and disappeared
in the dark night in a dense forest and could not be located.
Later, on 13.1.2003, he was found dead in the deep forest. The
wife of the deceased Satyam Mirza filed a complaint against H

A the Police stating that the deceased had died during police custody and to take appropriate action against the officials concerned. The learned Sub-Divisional Judicial Magistrate, on 4.7.2006, took cognizance of that complaint and registered case against the Appellant. As already stated, for quashing of
 B that complaint, the Appellant approached the High Court on the ground that no sanction under Section 197 Cr.P.C. was obtained before taking cognizance by the learned Magistrate. The scope of Section 197 Cr.P.C. has to be examined in the light of the Jharkhand Police Manual. Section 197 Cr.P.C. is
 C extracted hereinbelow for an easy reference :-

**“197. Prosecution of Judges and public servants. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused
 D of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.**

E (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

F (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

G Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “state Government” occurring therein, the expression “Central Government” were substituted.

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(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government. A

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted. B C

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government. D E

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the F G H

A Central Government in such matter to accord sanction and for the court to take cognizance thereon.

B (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

C 7. The above-mentioned provision clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police. The relevant Rule for our purpose is Rule 825, which is given below:

E **“825. Officers empowered to impose punishment. –**
(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

F (b) The Inspector-General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in rule 825.

(c) xxx xxx xxx

G (d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in rule 824 except dismissal; removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for

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information. If required, the file of departmental proceeding shall also be sent with it.

- (e) xxx xxx xxx
(f) xxx xxx xxx."

8. Rule 825, clauses (a) and (b) confers power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. A similar issue came up for consideration before this Court in *Nagraj's* case (*supra*), wherein this Court was called upon to examine the scope of Section 197 Cr.P.C. read with Section 4(c), 8, 26(1) and 3 of the Mysore Police Act, 1908. Interpreting the above-mentioned provisions, a Three-Judge Bench of this Court held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty.

9. The judgment referred to by the Appellant, such as, *Rakesh Kumar Mishra* (*supra*) is not applicable to the case in hand. The question raised, in our view, is directly covered by the judgment of this Court in *Nagraj's* case (*supra*) and the High Court was right in applying the ratio laid down in that case while interpreting the provisions of the Jharkhand Police Manual and we fully endorse the view of the High Court.

10. In the circumstances, we find no merit in this Appeal and the same stands dismissed.

R.P.

Appeal dismissed.